IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re Enron Corporation Securities Litigation	§	
Mark NEWBY, et al.,	§	
Plaintiffs,	§	Civil Action No. H-01-3624 (Consolidated)
v.	§	CLASS ACTION
ENRON CORP., et al.,	§	
Defendants.	§	

OPPOSITION OF ARTHUR ANDERSEN LLP TO LEAD PLAINTIFF'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION ENJOINING DISTRIBUTION OF ASSETS TO ANDERSEN'S PARTNERS

Arthur Andersen LLP ("Andersen") hereby submits this opposition to Lead Plaintiff's Purported Emergency Motion for a Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction Enjoining Distribution of Assets to Andersen's Partners. Plaintiff has set forth no basis for its motion for a Temporary Restraining Order and for expedited discovery and the motion should therefore be denied. In light of the seriousness of the relief sought by the Plaintiff, Andersen files this initial response to the motion.[1]

[1] There are other factual and legal deficiencies in the Plaintiff's request for relief that we do not address at length here.

998

First, Plaintiff has failed to submit an affidavit or verified pleading demonstrating any entitlement to a TRO, as required by FRCP 65. Moreover, the newspapers articles it submitted are not admissible evidence, most predate this Court's consideration of Plaintiff's first motion for a TRO, and not one mentions any alleged plan by Andersen to make capital distributions to its partners. Given the complete failure to comply with the clear language of Rule 65, the request for relief must be denied. Plaintiff's unsubstantiated and unsupportable assumptions and claims cannot form the basis for an injunction, no matter how "temporary."

Second, Plaintiff's request for relief is also barred by Grupo Mexicano de Desarollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308 (1999), as Plaintiff has "no lien or equitable interest" in Andersen's assets. See Newby v. Enron Corp., Memorandum and Order dated May 16, 2002. Plaintiff's claims against Andersen are purely legal claims and cannot be used to support the extraordinary relief sought here. For these same reasons, Plaintiff's reliance on Walczak v. EPL Prolong, Inc., 198 F.3d 725 (9th Cir. 1999), is misplaced. Further, as the Court previously held, the balance of the equities does not permit the type of relief sought by the Plaintiff here (and would pose significant risks to the ongoing operations of Andersen). See infra note 2.

Third, the Court has previously denied Plaintiff's claimed entitlement to discovery regarding Andersen's internal affairs. See Newby v. Enron Corp., Memorandum and Order dated May 16, 2002. Plaintiff's latest effort to obtain discovery to which it is not entitled, like that earlier effort, is based entirely upon unsubstantiated assumptions. The Federal Rules do not permit the type of discovery that Plaintiff seeks here (to determine all sorts of confidential information about the continued operations of Andersen ostensibly relating to the collectability of a judgment when no such a judgment exists). This Court, the U.S. District Court for the

Northern District of Illinois, the U.S. Bankruptcy Court overseeing the Enron bankruptcy, and the Superior Court of California have all rejected attempts by creditors to obtain exactly the same type of discovery.

For these reasons as well as others, the motion and related requests should be denied. What is particularly disturbing about the Plaintiff's motion, however, is that its predicate -- that Andersen is about to dissolve and distribute all of its remaining assets to its partners as a return of their capital -- has no basis in fact. Plaintiff has provided no evidence to even suggest a factual basis for its speculations, and Andersen does not bear any burden on this issue. Nevertheless, given the seriousness of the relief sought, Andersen states that it has not adopted any plan of dissolution and does not intend to dissolve on August 31 or thereafter. In addition, Andersen states that it suspended the return of capital to partners in March, 2002. Since that time, Andersen has not returned capital to its partners and has no plans to return capital to them on August 31 or thereafter.[2]

For the foregoing reasons,[3] Andersen requests that the Court deny the motion. Alternatively, Andersen requests that it be heard on this motion.

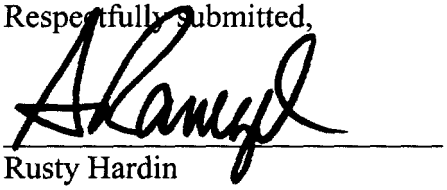
---

[2] However, Andersen cannot be precluded from paying contractual, ordinary-course obligations, including, for example, severance compensation, salaries, and medical benefits, as they become due and owing.

[3] Plaintiff's motion also violates S.D. Tex. Local R. 7.1(D). In its motion, Plaintiff states that it made an inquiry of Andersen about these matters and did not receive a response. As the Court can readily determine, the request was by letter, set no deadline for response, nor gave any notice of a possible motion. Andersen was preparing a response to the letter when it received this motion. Andersen's response would have stated, among other things, that Plaintiff is not entitled to the type of information that it seeks here. Andersen never received a phone call about these matters.

Dated: Houston, Texas
August 13, 2002

Respectfully submitted,



Rusty Hardin
State Bar No. 08972800
S.D. Tex. I.D. No. 19424

RUSTY HARDIN & ASSOCIATES, P.C.
1201 Louisiana, Suite 3300
Houston, Texas 77002
(713) 652-9000
(713) 652-9800 (fax)

Attorney-in-Charge for
Defendant Arthur Andersen LLP

OF COUNSEL
Andrew Ramzel
State Bar No. 00784184
S.D. Tex. I.D. No. 18269
RUSTY HARDIN & ASSOCIATES, P.C.

Daniel F. Kolb
Michael P. Carroll
Sharon Katz
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, New York 10017
(212) 450-4000
(212) 450-3633 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of Aug, 2002, the foregoing pleading was served pursuant to the Court's orders concerning service in this matter.

Andrew Ramzel